

**Notice of Allowability**

Application No.

09/869,334

Examiner

Delia M. Ramirez

Applicant(s)

ENDO ET AL.

Art Unit

1652

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/30/2005.
2. ☒ The allowed claim(s) is/are 14,21-36 and 38.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of the Application***

Claims 14, 21-36, 38 are pending.

Amendment of claims 25-28, 38, cancellation of claims 1-13, 15-20, 37, 39, and submission of a new abstract in a communication filed on 9/30/2005 is acknowledged.

In a telephone conversation with Stephen Roylance on 10/27/2005, an agreement was reached to amend claims 22-28 and 38 to place the application in condition for allowance.

### ***Examiner's Amendment***

1. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
- 2: Authorization for this Examiner's amendment was given in a telephone interview with Stephen Roylance on 10/27/2005.
3. Please amend claims 22-28 and 38 as follows:
4. In claim 22, line 1, please replace "A transformant" with "An isolated transformed cell".
5. In claim 23, line 1, please replace "the transformant according to claim 22, wherein the transformant" with "the transformed cell according to claim 22 wherein the transformed cell".
6. In claim 24, lines 1-2, please replace "the transformant according to claim 22 wherein the transformant" with "the transformed cell according to claim 22 wherein the transformed cell".
7. In claim 25, line 2, please replace "the transformant according to claim 22, a culture of the transformant" with "the transformed cell according to claim 22, a culture of the transformed cell".
8. In claim 25, line 21, please replace "wherein the treated product of the culture of the transformant" with "wherein the treated product of the culture of the transformed cell".

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9. In claim 26, lines 2-3, please replace “the transformant according to claim 22, a culture of the transformant” with “the transformed cell according to claim 22, a culture of the transformed cell”.
10. In claim 26, line 22, please replace “wherein the treated product of the culture of the transformant” with “wherein the treated product of the culture of the transformed cell”.
11. In claim 27, lines 2-3, please replace “the transformant according to claim 22, a culture of the transformant” with “the transformed cell according to claim 22, a culture of the transformed cell”.
12. In claim 27, line 21, please replace “wherein the treated product of the culture of the transformant” with “wherein the treated product of the culture of the transformed cell”.
13. In claim 28, lines 2-3, please replace “the transformant according to claim 22, a culture of the transformant” with “the transformed cell according to claim 22, a culture of the transformed cell”.
14. In claim 28, line 21, please replace “wherein the treated product of the culture of the transformant” with “wherein the treated product of the culture of the transformed cell”.
15. In claim 38, line 16, please replace “a transformant” with “a transformed cell”.

***Reasons for Allowance***

16. The following is an Examiner’s statement of reasons for allowance. Although the prior art discloses a nucleic acid encoding the polypeptide of SEQ ID NO: 1 (Rivolta et al.; cited in previous Office Actions), the Examiner has found no teaching or suggestion in the prior art directed to the nucleic acid of SEQ ID NO:2. The polynucleotide of Rivolta et al. comprises one mismatch at position 462 of SEQ ID NO: 2. Therefore, claims 14, 21-36 and 38 directed to the nucleic acid of SEQ ID NO:2, vectors comprising said nucleic acid, a host cell transformed with said vectors, a process for producing different chemical compounds with a transformed cell comprising the nucleic acid of SEQ ID NO: 2, and a method of recombinantly producing the polypeptide of SEQ ID NO: 1 using a host cell transformed with the nucleic acid of SEQ ID NO: 2 are allowable over the prior art of record.

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*Conclusion*

17. Claims 14, 21-36, and 38 are allowed.


18. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (571) 272-0938. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (571) 272-0928. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Delia M. Ramirez, Ph.D.  
Patent Examiner  
Art Unit 1652

DR  
October 28, 2005

  
REBECCA E. PROUTY  
PRIMARY EXAMINER  
GROUP 1800  
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